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Attorneys for Defendant  
 PUBLIC KEY PARTNERS

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROGER SCHLAFLY,

Plaintiff,

v.

PUBLIC KEY PARTNERS and  
 RSA DATA SECURITY, INC.,

Defendants.

No. CV 94 20512 SW (PVT)

DECLARATION OF THOMAS R. HOGAN  
 IN SUPPORT OF MOTION  
 FOR PROTECTIVE ORDER

Date: June 6, 1995

Time: 11:00 a.m.

Magis. Patricia V. Trumbull

I, Thomas R. Hogan, declare:

1. I am an attorney duly licensed to practice before all courts in the State of California, and I am the attorney of record for defendant Public Key Partners. I make this declaration based upon personal knowledge, information and belief, and I am competent to so testify if called as a witness.

2. On March 13, 1995, during a meeting with plaintiff Roger Schlafly, a proposal was made that plaintiff and defendants stipulate to a protective order to govern the process of discovery in this case. Also, at that meeting, I suggested the inclusion of

DECLARATION OF THOMAS R.  
 HOGAN IN SUPPORT OF MOTION  
 FOR PROTECTIVE ORDER

1 an "attorney's eyes only" provision, to govern the exchange of  
2 extremely confidential information.

3 3. In subsequent conversations with plaintiff Schlafly, he  
4 has been unwilling and reluctant to so stipulate.

5 4. In a good faith effort to meet and confer on this issue,  
6 on March 24, 1995, I sent a letter to plaintiff Schlafly outlining  
7 the pertinent case law and issues on the subject of protective  
8 orders, and again reiterated the need for such an order. A true  
9 and correct of copy of this letter is attached as Exhibit A to  
10 this declaration.

11 5. On or about April 7, 1995, I forwarded to plaintiff  
12 Schlafly a copy of the proposed protective order, a true and  
13 correct copy of which is attached as Exhibit B to this  
14 declaration.

15 6. On April 10, 1995, I received a letter from plaintiff  
16 Schlafly, in which he repeated his unwillingness to stipulate to  
17 the protective order as drafted. A true and correct copy of this  
18 letter is attached at Exhibit C to this declaration.

19 7. To date, plaintiff Schlafly refuses to agree to the  
20 proposed protective, and, as a result, defendant PKP brings the  
21 instant motion.

22 I declare under penalty of perjury that the foregoing is true  
23 and correct. Executed this 9th day of May, 1995, at San Jose,  
24 California

25   
26 THOMAS R. HOGAN

27 Attorneys for Defendant  
28 PUBLIC KEY PARTNERS

28 DECLARATION OF THOMAS R.  
HOGAN IN SUPPORT OF MOTION  
FOR PROTECTIVE ORDER



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TELEPHONE (408) 292-7600  
FACSIMILE (408) 292-7611

March 24, 1995

Roger Schlafly  
Post Office Box 1680  
Soquel, California 95073

Re: Schlafly v. Public Key Partners, et al., United States  
District Court, Northern District, Case No. C-94-20512  
SW PVT

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Dear Mr. Schlafly:

You will recall that during our meeting on March 13, 1995 with regard to discovery in this case, we proposed the inclusion of an "attorney's eyes only" provision in any stipulated protective order. In our subsequent conversations, you have indicated your disagreement with this concept and made reference to the fact that this does not appear anywhere in the Federal Rules of Civil Procedure.

I believe you will find the case of Brown Bag Software v. Symantec Corp., (9th Cir. 1992) 960 F.2d 1465, instructive with respect to this issue. In that case, which arose in this district and involved allegations of copyright infringement, the parties agreed that confidential information would be subject to a protective order containing an "attorney's eyes only" provision. At that time, both parties were represented by outside counsel. Subsequently, Brown Bag's retained counsel withdrew and their defense was thereafter handled by in-house counsel. Symantec then moved for a protective order which sought to prevent Brown Bag's counsel's access to the confidential material under the parties' previous stipulation. After an evidentiary hearing, the Court issued an Order preventing Brown Bag's in-house counsel from reviewing the documents and allowing Brown Bag access only through an "independent consultant, legal or otherwise." This Order was upheld on appeal.

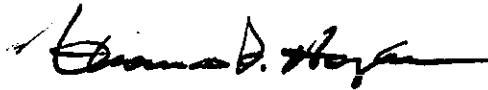
In our case, as you know, you are both the client and your own counsel and, hence, the situation is even more aggravated than was presented in Brown Bag Software.

Roger Schlafly  
March 24, 1995  
Page 2

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As I have discussed with you, we expect to shortly provide you with a proposed protective order and we will make every effort to enter into an agreement protecting the rights of all parties. If we are unsuccessful, the Court will appropriately review the issues and decide them for us. For the moment, since we do not anticipate producing any confidential information during this early stage of discovery, this issue need not be resolved. The purpose of this letter is to give you some basis for our position with respect to confidential information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Hogan", with a stylized flourish at the end.

Thomas R. Hogan

TRH/lh



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4  
5 Attorneys for Defendant  
PUBLIC KEY PARTNERS

6  
7 UNITED STATES DISTRICT COURT  
8  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 ROGER SCHLAFLY, ) No. CV 94 20512 SW  
11 )  
12 Plaintiff, ) [PROPOSED] STIPULATION AND  
13 ) PROTECTIVE ORDER  
14 v. )  
15 )  
16 PUBLIC KEY PARTNERS and )  
17 RSA DATA SECURITY, INC., )  
18 )  
19 Defendants. )  
20 \_\_\_\_\_ )

21 The parties to this action hereby stipulate that a Protective  
22 Order in the form attached hereto may be entered by the United  
23 States District Court, Northern District of California in Schlaflly  
24 v. Public Key Partners C 94-20512 SW. The parties stipulate that  
25 said Protective Order is necessary because discovery in this  
26 action is likely to result in the production of information and  
27 documents which contain highly sensitive, proprietary,  
28 confidential and trade secret information, the disclosure of which

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STIPULATION AND  
PROTECTIVE ORDER

1 to the other party or to third parties may cause injury to the  
2 producing party and/or to third parties.

3  
4  
5 DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Roger Schlafly, Plaintiff

6  
7 DATED: \_\_\_\_\_

LAW OFFICE OF THOMAS R. HOGAN

8  
9 By: \_\_\_\_\_  
Thomas R. Hogan  
Attorneys for Defendant  
PUBLIC KEY PARTNERS

10  
11 DATED: \_\_\_\_\_

TOMLINSON ZISKO MOROSOLI & MASER

12  
13  
14 By: \_\_\_\_\_  
Mary E. O'Byrne  
Attorneys for Defendant  
RSA DATA SECURITY, INC.

15  
16  
17 The parties having stipulated to the entry of this Protective  
18 Order, and good cause appearing therefor, it is ORDERED as  
19 follows:

20 1. Any party to this action which, in discovery, produces  
21 or discloses any item of discovery, including without limitation  
22 any document, thing, interrogatory answer, deposition testimony or  
23 admission, may designate the same as "CONFIDENTIAL BUSINESS  
24 INFORMATION PROTECTED BY COURT ORDER" where this discovery  
25 information contains trade secrets, competitively sensitive  
26 information, or other highly confidential information the present  
27 disclosure of which would, in the good faith judgment of the party  
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1 making the disclosure, be detrimental to that party or to third  
2 parties in the conduct of their business. Any party to this  
3 action may similarly designate as "CONFIDENTIAL BUSINESS  
4 INFORMATION PROTECTED BY COURT ORDER" any item of discovery that  
5 is produced or disclosed by a third party.

6 2. Any party to this action may designate certain highly  
7 confidential material which otherwise meets the criteria set forth  
8 in Paragraph 1, as "CONFIDENTIAL -- LITIGATION COUNSEL ONLY." A  
9 party may designate only the following material as "CONFIDENTIAL -  
10 - LITIGATION COUNSEL ONLY:"

11 a. Information regarding the prices charged by any  
12 party to this action for the sale or licenses of its products or  
13 technology;

14 b. Information regarding the general financial  
15 condition of any party to this action;

16 c. Documents or information reflecting the identity of  
17 customers or prospective customers of any party to this action;

18 d. Documents or information reflecting the terms of  
19 proposals to customers or prospective customers for the sale or  
20 licenses of a party's products or technology;

21 e. Documents or information reflecting the terms of  
22 agreements with a party's customers for the sale or licenses of  
23 that party's products or technology;

24 f. Documents or information reflecting a party's  
25 analysis of competing products, and/or advertising, marketing or  
26 sales strategies; and  
27  
28

1           g. Documents or information reflecting a party's  
2 research and development of its products, technology or services;  
3 and

4           h. Documents or information of third parties which was  
5 provided to the producing party pursuant to Non-disclosure  
6 Agreements.

7 Any party to this action may similarly designate as "CONFIDENTIAL  
8 -- LITIGATION COUNSEL ONLY" any item of discovery that is produced  
9 or disclosed by a third party. Any information designated  
10 "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" shall be treated as if it  
11 had been designated "CONFIDENTIAL -- LITIGATION COUNSEL ONLY."  
12 The designations "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" and  
13 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" shall have the same  
14 meaning under this Protective Order. Any material designated  
15 "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" or "CONFIDENTIAL --  
16 LITIGATION COUNSEL ONLY" may not be viewed by the plaintiff Roger  
17 Schlafly, but it may be viewed by independent expert consultants  
18 retained by him in accord with the provisions of paragraph 9  
19 below.

20       3. The designation of protected information that exists in  
21 tangible form shall be effected by visibly marking it as  
22 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER" or  
23 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY." Protected information  
24 that exists in a form that cannot readily be marked in a visible  
25 fashion shall be specifically identified, when produced, in  
26 correspondence by the producing party. In the event the producing  
27 party elects to produce original files and records for inspection,  
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1 and the inspecting party desires to inspect these files and  
2 records, no markings need be made by the producing party in  
3 advance of the initial inspection. For purposes of the initial  
4 inspection, all documents within the produced files and records  
5 shall be considered as marked "CONFIDENTIAL -- LITIGATION COUNSEL  
6 ONLY." Thereafter, upon selection of specified documents for  
7 copying by the inspecting party, the producing party shall mark  
8 the copies of such documents as may contain confidential material  
9 as "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER" or  
10 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY," prior to producing the  
11 copies. Marking the first page of a multi-page document with one  
12 of the two "CONFIDENTIAL" designations shall be deemed a  
13 designation of all pages of such document under that  
14 confidentiality designation, unless otherwise indicated by the  
15 producing party.

16 4. If during the course of a deposition any questions are  
17 asked regarding material designated "CONFIDENTIAL BUSINESS  
18 INFORMATION PROTECTED BY COURT ORDER," then only counsel of  
19 record, the representatives for each of the parties identified at  
20 Paragraph 8 herein, any experts identified by the parties in  
21 compliance with the provisions of Paragraph 8(c), the deponent,  
22 and the court reporter, shall be allowed to be present during such  
23 portion of the deposition, and only to the extent that such  
24 persons have complied (in each applicable instance) with the  
25 provisions of Paragraph 11 hereof. The corresponding portion of  
26 the deposition transcript shall be designated by the reporter as  
27 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER."  
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1 This Paragraph 4 shall not be deemed to authorize disclosure of  
2 any document or information to any person to whom disclosure is  
3 prohibited under this Protective Order.

4 5. If during the course of a deposition any questions are  
5 asked regarding material designated "CONFIDENTIAL --LITIGATION  
6 COUNSEL ONLY" or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY," then only  
7 the persons identified in Paragraph 9, the deponent pursuant to  
8 the terms of Paragraph 10 and the court reporter shall be allowed  
9 to be present during such portion of the deposition, and only to  
10 the extent that such persons have complied (in each applicable  
11 instance) with the provisions of Paragraph 11 hereof. The  
12 plaintiff Roger Schlafly shall not be allowed to be present  
13 during this portion of the deposition, but independent expert  
14 consultants retained by him in accord with the provisions of  
15 paragraph 9 below shall be allowed to be present. The  
16 corresponding portion of the deposition transcript shall be  
17 designated by the reporter as "CONFIDENTIAL -- LITIGATION COUNSEL  
18 ONLY." This Paragraph 5 shall not be deemed to authorize  
19 disclosure of any document or information to any person to whom  
20 disclosure is prohibited under this Protective Order.

21 6. With respect to depositions of any party or any person  
22 employed by, formerly employed by, or acting on behalf of a party  
23 to this action:

24 a. Such party shall make a good faith effort to  
25 identify questions or responses under one of the two  
26 confidentiality designations on the record during the deposition.  
27 When that party makes a confidentiality designation on the record  
28

1 during the course of the deposition, then only the persons  
2 entitled to have access to that information under the particular  
3 designation as set forth in Paragraphs 8 and 9 below, shall remain  
4 present in the deposition during that questioning;

5           b. Notwithstanding Paragraph 6.a. above, such party  
6 shall have until five (5) court days after receipt of the  
7 deposition transcript within which to inform the other parties and  
8 the court reporter that portions of the transcript are designated  
9 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER" or  
10 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY." No such deposition  
11 transcript shall be disclosed to any person other than the persons  
12 identified in Paragraph 9 below, the deponent pursuant to the  
13 terms of Paragraph 10 below, and the court reporter during these  
14 five (5) court days, and no person attending such a deposition  
15 shall disclose the contents of the deposition to any person other  
16 than the persons identified in Paragraph 9 below, the deponent  
17 pursuant to the terms of Paragraph 10 below, and the court  
18 reporter during this five (5) court days;

19           c. Upon being informed that certain portions of a  
20 deposition are to be designated as "CONFIDENTIAL BUSINESS  
21 INFORMATION PROTECTED BY COURT ORDER" or "CONFIDENTIAL --  
22 LITIGATION COUNSEL ONLY," each party and the court reporter shall  
23 cause each copy of the transcript in his or its custody or control  
24 to be so marked immediately; and

25           d. In the event that a portion of a deposition is  
26 transcribed separately, the time for making the designation  
27 pursuant to paragraph 6.b. above shall begin to run from the time  
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1 the portion of the transcript is received by the designating  
2 party.

3 7. All protected information marked or designated as  
4 provided herein shall not be used by any recipient or disclosed by  
5 anyone for any purpose other than in connection with this action,  
6 and shall not be disclosed by the recipient to anyone other than  
7 those persons designated below, unless and until the restrictions  
8 herein are removed either by agreement of counsel for all the  
9 parties or by order of the Court. This provision shall not be  
10 construed to prevent outside counsel from representing a party to  
11 this agreement in other litigation.

12 8. Only upon compliance with the provisions of Paragraph 11  
13 below, the following persons may be allowed access to information  
14 designated as "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY  
15 COURT ORDER:"

16 a. Court reporter(s);

17 b. Outside litigation counsel to the recipient, and  
18 legal associates, paralegal assistants, clerical staff, data  
19 processing staff, and secretaries regularly employed by such  
20 outside counsel and who are actively engaged in assisting such  
21 counsel with respect to this action;

22 c. Independent expert consultants engaged in this  
23 matter for the plaintiff Roger Schlafly or by counsel for the  
24 defendants (which expert consultants are not regularly employed by  
25 any of the parties), provided, however, that notice of intent to  
26 disclose confidential material to any such expert consultant shall  
27 be provided to the other party at least fifteen (15) days prior to  
28

1 such disclosure, during which period any other party may apply to  
2 the Court for an Order prohibiting such disclosure. The notice of  
3 intent to disclose shall identify the proposed expert consultants,  
4 including his or her current curriculum vitae, his or her area of  
5 expertise and a statement concerning said expert consultant's  
6 prior relationship, if any, with any party and/or the issues  
7 presented in the litigation. The information which is the subject  
8 of any motion hereunder shall not be disclosed to the identified  
9 expert consultant pending final resolution of the motion; and

10 d. The representatives specifically designated below  
11 of each of the parties as follows:

12 (i) The designated party representatives of RSA  
13 Data Security, Inc. are D. James Bidzos, Ronald R.  
14 Rivest and Kathy Conrow.

15 (ii) The designated party representatives of  
16 Public Key Partners are Robert Fougner, Lewis Morris,  
17 Jim Omura, D. James Bidzos, Ronald R. Rivest and Kathy  
18 Conrow.

19 (iii) The designated party representative of Roger  
20 Schlafly is Roger Schlafly.

21 Upon fifteen days' written notice to the opposing party, either  
22 party may substitute a new designated party representative in  
23 place of a designated representative set forth above. During such  
24 fifteen-day period, the other party may apply to the Court for an  
25 order prohibiting such designation. The information which would  
26 otherwise be made available to designated party representatives  
27 shall not be disclosed to the proposed substitute party  
28



1 representative pending final resolution of the application.

2 9. Only upon compliance with the provisions of Paragraph 11  
3 below, the following persons may be allowed access to information  
4 designated as "CONFIDENTIAL -- LITIGATION COUNSEL ONLY or  
5 "CONFIDENTIAL -- ATTORNEY'S EYES ONLY:"

6 a. Court reporter(s);

7 b. Outside litigation counsel engaged in this matter  
8 for the defendants, and legal associates, paralegal assistants,  
9 clerical staff, data processing staff, and secretaries regularly  
10 employed by such outside litigation counsel and who are actively  
11 engaged in assisting such counsel with respect to this matter.

12 Each firm shall take steps as are reasonably necessary to ensure  
13 adequate protection against improper disclosure; and

14 c. Independent expert consultants engaged in this  
15 matter for the plaintiff Roger Schlafly or by counsel for the  
16 defendants (which expert consultants are not regularly employed by  
17 any of the parties), provided, however, that notice of intent to  
18 disclose confidential material to any such expert consultant shall  
19 be provided to the other party at least fifteen (15) days prior to  
20 such disclosure, during which period any other party may apply to  
21 the Court for an Order prohibiting such disclosure. The  
22 information which is the subject of any motion hereunder shall not  
23 be disclosed to the identified expert consultant pending final  
24 resolution of the motion.

25 (1) Defendants shall have no obligation to produce  
26 information designated as "CONFIDENTIAL -- LITIGATION  
27 COUNSEL ONLY or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY to  
28



1 the plaintiff Roger Schlafly directly. Defendants shall  
2 produce materials under this designation to an  
3 independent expert consultant retained by plaintiff in  
4 accord with this paragraph.

5 10. Notwithstanding the provisions of Paragraphs 8 and 9  
6 hereof:

7 a. At the deposition of a person then or formerly  
8 employed by or associated with a party, information designated  
9 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER,"  
10 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" or "CONFIDENTIAL --  
11 ATTORNEY'S EYES ONLY" by that party may be disclosed to that  
12 person only in compliance with the following terms and conditions:

13 (i) The party proposing to disclose the  
14 information designated under one of the two confidentiality  
15 designations must give five (5) days' advance written notice to  
16 the party who designated the information prior to any such  
17 disclosure, provided however, that it is not necessary to provide  
18 this notice if the party intends to disclose the information to a  
19 deponent who wrote the document or is shown as a recipient of the  
20 document, as shown on the face of the document;

21 (ii) Unless otherwise agreed between the parties  
22 in a writing signed by all parties or on the record at a  
23 deposition, but not otherwise, the deponent must have complied  
24 with the provisions of Paragraph 11 before being shown any  
25 information designated under one of the two confidentiality  
26 designations; and

1 (iii) Unless otherwise agreed between the parties  
2 in a writing signed by all parties or on the record at a  
3 deposition, but not otherwise, the deponent may be shown  
4 information designated under one of the two confidentiality  
5 designations, only if that information is dated or was created  
6 during the period of time that the deponent was employed or  
7 associated with the designating party; and

8 b. All parties may agree in a writing signed by all  
9 parties, or on the record at a deposition, but not otherwise, to  
10 permit any document designated under either of the two  
11 confidentiality designations to be shown to a particular  
12 individual on such terms as the parties agree upon, and the  
13 document shall for all other purposes be treated as having been  
14 designated under that particular confidentiality provision under  
15 the terms of this Protective Order, and the agreed upon disclosure  
16 shall not be considered to be a waiver of any rights or evidence  
17 that the document is not entitled to the full protection afforded  
18 by this Protective Order to documents designated under that  
19 confidentiality designation.

20 11. Unless otherwise agreed between all of the parties in a  
21 written agreement signed by all parties or on the record in a  
22 deposition by all of the parties, no person authorized under  
23 Paragraphs 8 or 9 to have access to information designated  
24 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER" or  
25 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" shall be granted access  
26 to that information until that person has received and read a copy  
27 of this Protective Order and has agreed in writing to be bound  
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1 hereby by signing a copy of the Declaration of Agreement attached  
2 hereto as Exhibit A. The original of each executed Declaration of  
3 Agreement shall be maintained by the party receiving the  
4 information designated under one of the two confidentiality  
5 designations.

6 12. Nothing herein shall restrict a party's use or  
7 disclosure of material obtained by such party independent of  
8 discovery in this action (whether or not such material is also  
9 obtained through discovery in this action), or from disclosing its  
10 own confidential material.

11 13. Any party receiving an item of information which has  
12 been designated as "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY  
13 COURT ORDER," "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" or  
14 "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" may object in writing to  
15 such designation. The following procedure shall apply to the  
16 resolution of any such objection:

17 a. The written objection must identify the particular  
18 information which the receiving party believes should not be  
19 treated in accord with its confidentiality designation. If the  
20 information has been designated as "CONFIDENTIAL -- LITIGATION  
21 COUNSEL ONLY" or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY," and  
22 plaintiff's independent expert consultant seeks to change that  
23 designation such that plaintiff can view the information, then the  
24 written objection must be prepared by the independent consultant;

25 b. The parties and/or independent expert consultant  
26 must meet and confer as soon as possible after the objection is  
27 made, but no later than three court days after the objection is  
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1 served on the producing party. The meet and confer session should  
2 be held in good faith in an effort to resolve the dispute without  
3 the necessity of a hearing before the Court;

4 c. If the objection is not resolved through the meet  
5 and confer session, the party receiving the information or the  
6 independent expert consultant for plaintiff (with respect to  
7 information designated "CONFIDENTIAL -- LITIGATION COUNSEL ONLY"  
8 or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY") may make a motion to  
9 the Court to challenge the designation. The content of such  
10 motion shall consist of an identification of the information  
11 subject to the dispute, and a summary of the reasons for the  
12 objection;

13 d. Any opposition to the motion must be filed with the  
14 Court in accord with its procedures. The party producing the  
15 information shall bear the burden of proof with respect to the  
16 appropriateness of the designations of the information;

17 e. Any reply in support of the motion must be filed  
18 with the Court in accord with its procedures;

19 f. The information which is the subject of the motion  
20 shall be treated in accordance with its designated confidential  
21 status pending resolution of the motion.

22 14. Any documents or other information designated as  
23 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER,"  
24 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" or "CONFIDENTIAL --  
25 ATTORNEY'S EYES ONLY" which are filed with the Court for any  
26 purpose shall be filed in a sealed envelope marked on the outside  
27 with the title of the action, an identification of each document  
28

1 or other item within, and a statement substantially in the  
2 following form:

3 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED  
4 BY COURT ORDER" or "CONFIDENTIAL -- LITIGATION  
5 COUNSEL ONLY"

6 "This envelope contains information that is the subject  
7 of a Confidential Protective Order entered by the Court.  
8 It is not to be opened nor the contents thereof  
9 displayed except by Court Order or by agreement of the  
10 parties."

11 To the extent practicable, protected information shall be filed  
12 separately or in severable portions of filed papers, so that the  
13 non-confidential portions may freely be disseminated. No  
14 protected information shall be included in whole or in part in  
15 pleadings, motions, briefs, or other papers filed in this action  
16 or with the Court except as provided in this Paragraph.

17 15. In the event a party believes it is necessary that  
18 material designated under one of the two confidentiality  
19 categories be disclosed to a person other than those persons to  
20 whom disclosure is authorized by this Protective Order, but that  
21 the information otherwise remain confidential, then that party may  
22 file a motion with the Court for an appropriate modification of  
23 this Protective Order, specifying the particular confidential  
24 material proposed to be disclosed, the person(s) to whom the party  
25 proposes to disclose the material, and the reasons why such  
26 disclosure is necessary. The motion shall be made upon the  
27 Court's regular noticed motion schedule. Such motion may be  
28

1 granted, in whole or in part, and upon such conditions as the  
2 Court deems appropriate.

3 16. Nothing in this Protective Order shall limit or preclude  
4 either party from applying to the Court for relief from this  
5 Protective Order, or for such further or additional Protective  
6 Orders as the Court may deem appropriate.

7 17. Each party shall take reasonable precautions to prevent  
8 the unauthorized or inadvertent disclosure of any confidential  
9 material. All documents or other tangible material containing or  
10 comprising confidential material shall, when not in use, be stored  
11 in a secured area of the offices of outside counsel for the  
12 parties or of other persons authorized to have access to such  
13 material pursuant to the terms of this Order. It shall not be  
14 necessary for confidential material to be kept locked, so long as  
15 only persons authorized to see them under this protective order  
16 are reasonably likely to have access to them.

17 18. Neither the taking of any action in accordance with the  
18 provisions of this Protective Order nor the failure to object to  
19 such action shall be construed as a waiver of any claim or defense  
20 in this action. Moreover, the failure to designate information in  
21 accordance with this Protective Order or the failure to object to  
22 a designation at a given time shall not preclude the filing of a  
23 motion at a later date seeking to impose such designation or  
24 challenging the propriety thereof. This Protective Order shall  
25 not be construed as a waiver of any right to object to the  
26 furnishing of information in response to discovery. Further, the  
27 entry of this Protective Order shall not relieve any party of the

1 obligation of producing information in the course of discovery, in  
2 accordance with the terms of this Protective Order.

3 19. Upon final termination of this action, including the  
4 exhaustion of all appeals from any enforcement proceedings, all  
5 confidential information furnished or produced under the terms of  
6 this Protective Order, including all copies thereof and all  
7 documents incorporating such information, shall be (1) delivered  
8 to the designating party, or (2) destroyed, unless the parties  
9 otherwise agree in a writing filed with the Court. Papers filed  
10 with the Court shall remain under seal unless the Court, for good  
11 cause shown, otherwise directs. The parties may maintain copies  
12 of pleadings filed in this action which contain confidential  
13 information, provided, however, that the restrictions on use and  
14 access in this order shall continue to remain in place with  
15 respect to such pleadings and work product, unless the parties  
16 otherwise agree in writing.

17 20. This Protective Order shall remain in full force and  
18 effect unless modified by an Order of the Court or by the written  
19 stipulation of all parties hereto filed with the Court. Without  
20 limiting the generality of the foregoing, this Protective Order  
21 shall survive and remain in full force and effect after the  
22 termination of this action.

23 21. Court Procedures.

24 a. The parties shall understand and agree that persons  
25 employed by the Court have no duty to the parties to protect or  
26 maintain the alleged confidentiality of any information in any  
27 papers filed with the Court.

1           b. For applications and motions to the court in which  
2 a party submits confidential information, all documents containing  
3 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER",  
4 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" or "CONFIDENTIAL --  
5 ATTORNEY'S EYES ONLY" which are submitted to the Court shall be  
6 filed with the Court in sealed envelopes or other appropriate  
7 sealed containers on which shall be endorsed the title of the  
8 action to which it pertains, an indication of the nature of the  
9 contents of the sealed envelope or other container, the word  
10 "CONFIDENTIAL" and a statement substantially in the following  
11 form:

12           This envelope is sealed pursuant to order of the Court,  
13           contains Confidential information, and is not to be  
14           opened or the contents revealed except by order of this  
15           Court.

16 The document shall indicate clearly which portions are designated  
17 to be confidential. A copy of this protective order shall be  
18 submitted with the lodged materials. Materials lodged shall be  
19 returned by the Court to the submitting party immediately after  
20 the hearing or as nearly as is otherwise practicable. Any and all  
21 confidential materials shall be kept either by the submitting  
22 party or by a safe independent depository for the duration of the  
23 action.

24           c. Any Court hearing which refers to or describes  
25 "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER,"  
26 "CONFIDENTIAL -- LITIGATION COUNSEL ONLY," or "CONFIDENTIAL --  
27  
28



1 ATTORNEY'S EYES ONLY" shall in the Court's discretion be in  
2 camera.

3 d. Notwithstanding the above, any party may apply to  
4 the Court for an order allowing the filing of papers containing  
5 confidential information, if that party believes the filing of the  
6 papers is necessary for a complete record. Any such papers shall  
7 be placed by the submitting party in a sealed envelope labeled as  
8 set forth in "b." above. Any papers containing confidential  
9 information shall be returned to the submitting party upon  
10 dismissal or final judgment in the action.

11  
12 DATED: \_\_\_\_\_

\_\_\_\_\_  
13 SPENCER WILLIAMS, JUDGE  
14 UNITED STATES DISTRICT COURT  
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EXHIBIT A - DECLARATION OF AGREEMENT

I, \_\_\_\_\_, declare and say that:

1. I live at \_\_\_\_\_

I am employed as [state position] \_\_\_\_\_

2. I have read the Protective Order entered in Schlafly v. Public Key Partners and RSA Data Security, Inc, C 94 20512 SW (PVT), and a copy of the Protective Order has been given to me.

3. I promise that any information designated "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER" or "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" within the meaning of the Protective Order will only be used by me or disclosed by me for a purpose in connection with this action and in the conduct of this action and for no other purpose.

4. I promise that I will not disclose or discuss information designated as "CONFIDENTIAL BUSINESS INFORMATION PROTECTED BY COURT ORDER" to or with anyone other than the persons described in Paragraph 8 of the Protective Order.

5. I promise that I will not disclose or discuss information designated as "CONFIDENTIAL -- LITIGATION COUNSEL ONLY" or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY" to or with anyone other than the persons described in Paragraph 9 of the Protective Order.

6. I understand that any disclosure or use of confidential material or information obtained from confidential material in any

1 manner contrary to the provisions of the Protective Order will  
2 subject me to sanctions for contempt of the Court's Order. I  
3 consent to the jurisdiction of the United States District Court  
4 for the Northern District of California for purposes of enforcing  
5 the Protective Order.

6 I declare under penalty of perjury that the foregoing is true  
7 and correct, and that this Declaration was executed this \_\_\_\_ day  
8 of \_\_\_\_\_, 19\_\_ at \_\_\_\_\_,

9 \_\_\_\_\_.

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REC'D APR 10 1995

Tom Hogan  
60 S Market St, Ste 1125  
San Jose, CA 95113  
408-292-7600

April 7, 1995

Dear Mr. Hogan,

I received your proposed protective order, and your letter arguing for confidentiality.

I cannot agree to the order as written, because it keeps me from seeing documents that I believe will be essential to my case. It also restricts my ability to conduct depositions. I am willing to agree to some restrictions on what I can do with the documents, provided that they are really trade secrets, but I don't know how I can prepare my case without access to them.

Getting a protective order should involve a narrow specification of documents, evidence that the information is maintained as a trade secret, and a showing that irreversible damage will result from disclosure. It is not obvious to me, for example, that PKP financial data can meet these conditions.

I will argue for confidentiality conditions for my source code, and for documents subject to third-party nondisclosure agreements. If necessary, I can make a showing that disclosure is damaging. Source code is the most sensitive of trade secrets, and I am not satisfied that the proposed protective order has sufficient safeguards in place for source code. I'd like to see a list of every individual who gets access to it, a representation that such access is necessary, and guarantees that no copies will be made.

I also see some differences between my situation and Brown Bag Software v. Symantec, the case cited in your letter. Brown Bag had agreed to an "attorneys eyes only" protective order, and then reneged later when it fired the outside counsel. The court ruled that outside counsel had ample opportunity to examine the documents, and may have blown some deadlines. The documents included very sensitive source code. Corporations have to use attorneys anyway, but individuals do not. There are other differences also, which I can argue in court if necessary.

Based on our discussions, I expect you to file a motion with the court, asking for a protective order along the lines you have proposed. I will then oppose this motion, and make my own proposal.

Sincerely,



Roger Schlafly